

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4310 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KISHOR MANSING DAMOR

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.L.R. Pujari, learned A.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGMENT ;

1. This Special Civil Application is directed against the order dated 17-4-96 passed by the Police Commissioner, Ahmedabad City detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order is said to have been executed on 18-4-96 and since then the petitioner is under detention lodged at Bhavnagar District Prison,

Bhavnagar.

2. This Special Civil Application was filed on 24-6-96 and on 25-6-96 Rule returnable for 22-7-96 was issued, but so far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that 5 criminal cases under Bombay Prohibition Act had been registered against the petitioner in the year 1994 and 1995 and besides these 5 cases, there were 2 more matters against the petitioner under the Prohibition Act. Out of these 7 matters, in all 5 matters were pending in the Court and in 2 matters, the police investigation was going on at the time when the detention order was passed. In these matters, quantity of country liquor involved is 4 to 80 liters. On the basis of the allegations of these criminal cases, the detaining authority has mentioned that the petitioner was engaged in the business of country liquor, which was injurious to the health. Reference has also been made to the previous Latha Kand and the evil consequences of it, though the petitioner was not concerned with the Latha Kand. The detaining authority found that the petitioner was a bootlegger and was engaged in anti social activities of selling country liquor, which became a problem for the public order. Besides these, with regard to the incident dated 23-3-96 the witness has stated that while the witness was passing near Ranip Kamdhenu Society he was approached by the petitioner, the witness told the petitioner that he may go away from this place to sell the liquor, the petitioner got enraged and threatened the witness, the witness was publicly beaten by the petitioner, when he cried for help, the petitioner came out with a knife and went after the members of the crowd, the members of the crowd became helter skelter and an atmosphere of fear and terror was created. The other witness has stated that on 26-3-96 while passing near Ranip Maganpura Naka the petitioner asked the witness to keep stock of unauthorised liquor in his house and when the witness refused, the petitioner got enraged, gave public beating to the witness, the witness cried for help, the crowd was collected, the petitioner ran after the members of the crowd with a knife, the people had become helter skelter, an atmosphere of terror was created resulting into the disturbance of the daily routine life. The witnesses have also stated that their identity be kept secret as they were frightened and afraid of the petitioner and accordingly their identity was kept undisclosed with the aid of the provisions of S.9(2) of

the Act. The detaining authority has also mentioned that steps under the Bombay Police Act will take long time and to prevent the petitioner from carrying on the anti social activities it was necessary to detain him. The detaining authority has also mentioned that at the time of passing this order, the petitioner was in judicial custody and there was a possibility that in case of release on bail from the case No.136/96 under the Bombay Prohibition Act, the petitioner will continue with his anti social activities and, therefore, it was necessary to pass the detention order. Accordingly the detention order was passed.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it may constitute a case of breach of law and order.

5. Learned A.G.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered similar allegations in Special Civil Application No.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations, such as levelled in the present case, do not constitute the case of breach of public order and at the most it constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed apply with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 17-4-96 passed by Police Commissioner, Ahmedabad City is hereby quashed and set aside and the petitioner's detention under detention order dated 17-4-96 passed by Police Commissioner, Ahmedabad City is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

